

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

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|--------------------------------------|---|----------------------------------|
| BARNEY M. WATSON, et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | CIVIL ACTION 14-0452-WS-M |
| |) | |
| TELEDYNE TECHNOLOGIES |) | |
| INCORPORATED PENSION PLAN, et |) | |
| al., |) | |
| |) | |
| Defendants. |) | |

ORDER

In accordance with the parties’ joint stipulation, (Doc. 43), all claims against defendant Continental Motors Pension Plan (“Continental”) are **dismissed without prejudice**, each party to bear its own costs and attorney’s fees. *See Oswalt v. Scripto, Inc.*, 616 F.2d 191, 194-95 (5th Cir. 1980) (Rule 41(a)(1) governs dismissal of a single defendant).

The parties’ “stipulation of dismissal as to Count II” of the complaint, (Doc. 42), in contrast, is ineffective to accomplish dismissal. While Rule 41(a)(1) can be used to dismiss all claims against less than all defendants, it cannot be used to dismiss less than all claims against a defendant. *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1106 (11th Cir. 2004) (“Rule 41 allows a plaintiff to dismiss all of his claims against a particular defendant; its text does not permit plaintiffs to pick and choose, dismissing only particular claims within an action.”).¹ The

¹ *Accord Bailey v. Shell Western E&P, Inc.*, 609 F.3d 710, 720 (5th Cir. 2010); *Hells Canyon Preservation Council v. United States Forest Service*, 403 F.3d 683, 687-88 (9th Cir. 2005); *Gobbo Farms & Orchards v. Poole Chemical Co.*, 81 F.3d 122, 123 (10th Cir. 1996); *Exxon Corp. v. Maryland Casualty Co.*, 599 F.2d 659, 662 (5th Cir. 1979).

problem is the same when dismissal is sought by motion under Rule 41(a)(2). *Id.* The proper means of dismissing less than all claims against a single defendant is by amended complaint. *Id.* The plaintiffs are thus **ordered** to file and serve, on or before **January 12, 2015**, either an amended complaint eliminating Count II or an acknowledgment that the remaining defendants' motion to dismiss, (Doc. 33), is due to be granted as to Count II.

DONE and ORDERED this 29th day of December, 2014.

s/ WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE

The difference in treatment flows from the language of Rule 41(a)(1), which permits the voluntary dismissal of an "action," not (as in Rule 41(b)) of a "claim"; dismissal of all claims against a defendant effectively ends the action as to that defendant and so is permitted by the rule. *Exxon*, 599 F.2d at 662.